

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

<u>IN THE MATTER OF:</u>	)	
	)	
<b>Shell Chemical LP</b>	)	CONSENT ORDER NO.
Saraland, Mobile County, Alabama	)	
	)	
<u>Air Facility ID No. 503-4003</u>	)	

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” or “ADEM”) and Shell Chemical LP (hereinafter, “Shell”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. Shell operates the Saraland Petroleum Refinery (ADEM Air Facility ID No. 503-4003) (hereinafter, the “Facility”) located in Saraland, Mobile County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code rs. 335-3-6-.20(3) and (4)(a) prohibit a person from allowing trucks to load gasoline without displaying a current Air Sticker issued by either the Department or the Jefferson County Department of Health.

5. The current Major Source Operating Permit (MSOP) No. 503-4003 was issued June 22, 2007, and became effective July 1, 2007.

6. General Proviso No. 4 of the current MSOP requires Shell to comply with all requirements of the *ADEM Administrative Code*.

### ***DEPARTMENT'S CONTENTIONS***

7. On September 10, 2010, the Department issued Shell a Warning Letter for allowing Richerson Oil Trailer No. 112 to load gasoline without displaying a current Air Sticker as required by State Regulations.

8. In its Warning Letter response, dated October 9, 2010, Shell disclosed that Richerson Oil Trailer No. 112 had loaded eighty-two times from December 1, 2009, through August 16, 2010, due to a data entry error. Additionally, Shell disclosed that Pilot/Flying J Trailer No. 907 had loaded gasoline seven times during the same time frame due to loopholes in its loading rack computer system.

9. On October 14, 2010, the Department informed Shell by telephone that, while no further action was to be taken at that time on these instances, any future occurrences would be viewed as a very serious matter that could result in further enforcement action.

10. On December 13, 2010, Shell notified the Department that Penn Tank Lines Trailer No. 1362 had loaded gasoline without a current Air Sticker.

11. Shell's subsequent investigation revealed that Penn Tank Lines Trailer No. 1362 had loaded gasoline fourteen times since the Air Sticker had expired, including November 30, 2010, and December 13, 2010.

12. On February 11, 2011, the Department issued Shell a Notice of Violation (NOV) for allowing Richerson Oil Trailer No. 112 to load gasoline eighty-two times without a current Air Sticker, for allowing Pilot/Flying J Trailer No. 907 to load gasoline seven times without a current Air Sticker, and for allowing Penn Tank Lines Trailer No. 1362 to load gasoline fourteen times without a current Air Sticker.

13. On March 9, 2011, Shell submitted its written response to the NOV to the Department. In this response, Shell stated that each of the instances cited in the NOV was the result of gaps in its Air Sticker management program. Furthermore, Shell stated that these gaps have been closed, and that improved training should eliminate future events.

14. Pursuant to Ala. Code §22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. SERIOUSNESS OF THE VIOLATION: The Department recognizes that Shell was addressing each of the separate issues identified in this Order as each was discovered. However, Shell failed to exhibit a sufficient standard of care to address all of the gaps in its overall truck rack management system after having received a Warning Letter. Failure to do so allowed Penn Tank Lines Trailer No. 1362 to load on November 30, 2010, and December 13, 2010, with an expired Air Sticker. In addition, the twelve instances where Penn Tank Lines

Trailer No. 1362 loaded gasoline prior to September 10, 2010, should have been discovered and disclosed in Shell's October 9, 2010, Warning Letter response. However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. THE STANDARD OF CARE: Shell failed to exhibit a sufficient standard of care by allowing Penn Tank Lines Trailer No. 1362 to load on November 30, 2010, and December 13, 2010, after having received a Warning Letter. In addition, the twelve instances where Penn Tank Lines Trailer No. 1362 loaded gasoline prior to September 10, 2010, should have been discovered and disclosed in Shell's October 9, 2010, Warning Letter response.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department believes that Shell derived an insignificant economic benefit from allowing these trucks to load gasoline without displaying a current Air Sticker.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts by Shell to minimize or mitigate the effects of the violations on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: On September 10, 2010, Shell received a Warning Letter from the Department for allowing trucks to load gasoline without displaying a current Air Sticker. The Department issued Shell an NOV on February 11, 2011, for allowing trucks to load gasoline a total of one hundred three times without displaying a current Air Sticker.

F. THE ABILITY TO PAY: Shell has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

15. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

16. The Department neither admits nor denies Shell's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### ***SHELL'S CONTENTIONS***

17. Shell neither admits nor denies the Department's contentions. Shell consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. As such, this Consent Order shall not be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who bring claims in any legal, administrative or other proceeding) as an admission by Shell of liability.

#### ***ORDER***

THEREFORE, Shell, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) c (2006 Reply. Vol.), as well as the need for timely and effective enforcement and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Shell agree to enter into this Consent Order with the following terms and conditions:

A. Shell agrees to pay to the Department a civil penalty in the amount of \$10,000 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Shell agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. Shell agrees to comply with all requirements of ADEM Admin. Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. Shell agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Shell agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Shell also agrees that in any action brought by the

Department to compel compliance with the terms of this Agreement, Shell shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Shell, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Shell) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Shell, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and Shell agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Shell shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and Shell agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Shell does hereby waive any hearing on the terms and conditions of same.

J. The Department and Shell agree that this Order shall not affect Shell's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and Shell agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and Shell agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and Shell agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and Shell agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Shell of its obligations to comply in the future with any permit.



Executed in duplicate, with each part being an original.

SHELL CHEMICAL LP

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
Date Executed

\_\_\_\_\_  
(Printed Title)

\_\_\_\_\_  
Date Signed

## Attachment A

### Penalty Calculation Worksheet

Shell Chemical  
Saraland, Mobile County, Alabama  
Facility No. 503-4003

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to assure that all trucks loading gasoline display current Air Sticker	2	\$ 2,000.00	\$ 4,000.00	\$ 4,000.00
<b><i>TOTAL</i></b>	<b><i>2</i></b>	<b><i>\$ 2,000.00</i></b>	<b><i>\$ 4,000.00</i></b>	<b><i>\$ 4,000.00</i></b>

Economic Benefit \$ -  
Mitigating Factors \$ -  
Ability to Pay \$ -  
Other Factors \$ -  
CIVIL PENALTY \$ 10,000.00

#### Footnotes

\* See the "Findings" of the Order for a detailed description of each violation and penalty factors